



**RE: Performance Guarantee**  
**Wurtzler, Gail** to: Clifford Villa  
Cc: "Lawrence, Robert"

11/13/2009 12:28 PM

Okay. I think we are set.

-----Original Message-----

From: Villa.Clifford@epamail.epa.gov  
[mailto:Villa.Clifford@epamail.epa.gov]  
Sent: Friday, November 13, 2009 1:26 PM  
To: Wurtzler, Gail  
Cc: Lawrence, Robert  
Subject: RE: Performance Guarantee

Oh, I see. Your original pdf had dropped off the chain. Got it. Done.  
Thanks.

Cliff Villa  
Assistant Regional Counsel  
U.S. EPA Region 10

"Wurtzler, Gail"  
<Gail.Wurtzler@d  
gslaw.com>

To

Clifford

Villa/R10/USEPA/US@EPA  
11/13/2009 12:21

cc

PM

<craig.trueblood@klgates.com> ,

<Darrell.Early@deq.idaho.gov> ,

"Lawrence,

Robert"

<Robert.Lawrence@dgslaw.com> ,

"Himmelhoch,

Sarah (ENRD)"

<Sarah.Himmelhoch@usdoj.gov>

Subject

RE: Performance

Guarantee

Cliff,

I will ask but I cannot promise whether I will have anything today.  
Can't you add that language to the EPA form? I assume you have the EPA form in Wordperfect or Word. In any event, I do not believe that Appendix E needs to be absolutely identical to the final signed document  
- Para. 48 says " in a form substantially identical to the documents attached hereto as Appendix E."

Gail Wurtzler  
Davis Graham & Stubbs LLP  
1550 Seventeenth Street  
Suite 500  
Denver, CO 80202  
(303) 892-7405  
gail.wurtzler@dgsllaw.com

-----Original Message-----

From: Villa.Clifford@epamail.epa.gov  
[mailto:Villa.Clifford@epamail.epa.gov]  
Sent: Friday, November 13, 2009 1:15 PM  
To: Wurtzler, Gail  
Cc: craig.trueblood@klgates.com;  
Darrell.Early@deq.idaho.gov; Lawrence,  
Robert; Himmelhoch, Sarah (ENRD)  
Subject: RE: Performance Guarantee

While Para. 48 concludes that executed instruments will be due after CD entry, the first sentence says initial Performance Guarantee will be "in the form attached hereto as Appendix E." Accordingly, I think we need to have an unsigned, draft form (like the draft environmental covenant) that can be physically appended to the CD so that there's no question later what this is supposed to look like.

We had no objections to your last proposed changes of 8/3. Is it possible to get a quick, clean, unsigned copy of that for purposes of final gov't approval and lodging?

Cliff Villa  
Assistant Regional Counsel  
U.S. EPA Region 10

"Wurtzler, Gail"  
<Gail.Wurtzler@d

gslaw.com>  
To  
Villa/R10/USEPA/US@EPA  
11/13/2009 11:51  
cc  
AM  
<Darrell.Early@deq.idaho.gov>,  
<craig.trueblood@klgates.com>,  
Robert" "Lawrence,  
<Robert.Lawrence@dgsllaw.com>,  
Sarah (ENRD)" "Himmelhoch,  
<Sarah.Himmelhoch@usdoj.gov>  
Subject RE: Performance  
Guarantee

Cliff,

Based on my notes and some emails we exchanged on or about August 3, 2009, I believe that we agreed to make the language change to the independent CPA letter form that is marked on the pdf you attached and that otherwise that form and the CFO form would be the same as the EPA forms at the link you provided several months ago. Per paragraph 48 of the CD, we plan to submit the final signed forms within 30 days after the court enters the CD. Let me know if this does not answer your question. Thanks.

Gail

From: Villa.Clifford@epamail.epa.gov [mailto:Villa.Clifford@epamail.epa.gov]  
Sent: Friday, November 13, 2009 12:32 PM  
To: Wurtzler, Gail; Lawrence, Robert; craig.trueblood@klgates.com  
Cc: SHimmelh@enrd.usdoj.gov; Darrell.Early@deq.idaho.gov  
Subject: Performance Guarantee

Gail, all - Do you remember where we are on this? It is listed in the CD as Appendix E. At the moment, it is the only appendix I'm still missing.

As for attachments to the SOW, just waiting on final RADs for the Wallace Yard. I know Sara is working on that presently.

Cliff Villa  
Assistant Regional Counsel  
U.S. EPA Region 10  
----- Forwarded by Clifford Villa/R10/USEPA/US on  
11/13/2009 11:26 AM  
-----

"Wurtzler,  
Gail"  
<Gail.Wurtzler  
@dgslaw.com>

To

Clifford Villa/R10/USEPA/US@EPA

cc

08/03/2009 <Darrell.Early@deq.idaho.gov>,  
09:49 AM <craig.trueblood@klgates.com>,  
"Lietz, Denise" <denise.lietz@klgates.com>,  
"Lawrence, Robert" <Robert.Lawrence@dgslaw.com>,  
<Sarah.Himmelhoch@usdoj.gov>

Subject

Wallace Yard and Spur Lines Site  
- Preparing final documents

CONFIDENTIAL SETTLEMENT COMMUNICATION  
SUBJECT TO FRE 408

Cliff,

This morning I received a request through UPRR from Deloitte Touche, UPRR's independent CPA, regarding a correction in terminology for the independent CPA letter for financial assurance. I was told that auditing is done under Public Company Accounting Oversight Board standards, not US GAAP. US GAAP applies to reporting, not auditing. For that reason, Deloitte would like to change the language in numbered paragraph 1 in the CPA letter as shown on the attached PDF. Please let me know as soon as possible whether that change will be permitted.

Also, Bob and I have read your late Friday email (although not yet the attachments) and noted that it did not include the final version of the RAD Drawings on the list of items to include in the signature package. Those drawings also need to be included in the signature package. As we have all discussed many times, it is essential that we have a complete package with all components of the settlement to present to UPRR management for final approval and signature.

Bob and I will communicate further after we review the attachments to your email. You should anticipate that we will have comments on the environmental covenant exhibit. In order to comply with Section XI of the CD, the parties need to do more than add EPA to Idaho's form.

Thanks.

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